## M.B. Consultants, Ltd. *and* Local 174, United Food and Commercial Workers, AFL-CIO, Petitioner. Case 3–RC-10769

July 30, 1999

## DECISION AND CERTIFICATION OF RESULTS OF ELECTION

## BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on January 8, 1999, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The revised tally of ballots shows 53 for and 59 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the hearing officer's findings and recommendations only to the extent consistent with this decision. Contrary to the hearing officer, we find insufficient evidence of objectionable conduct which could have affected the results of the election. We, therefore, conclude that a certification of results of election should be issued.

The hearing officer recommended that the Employer's objections be overruled in their entirety and that the Petitioner's objections pertaining to alleged unlawful threats, interrogations, surveillance, and coercive changes in the lunch hour also be overruled. However, the hearing officer found that Jeremias Marcano, the Employer's plant manager, committed objectionable conduct by promising a benefit to two employees. He recommended that the election be set aside because the final election result, which was "likely" to be "close," might be affected by this misconduct.

The record established that on January 6, 1999, Marcano approached Josefa Garay, an employee who was one of the strongest union supporters, and her sister. According to Garay, Marcano advised her to "put the union aside" and then to "get a group of people" together to speak directly to upper management "to negotiate or bargain what we wanted as employees." Marcano suggested that she should make a list of the things employees wanted so that she would not forget anything, and that if the Employer did not keep its promises to the em-

ployees, then they could again seek to have a union represent them.

In his testimony, Marcano confirmed that he had a conversation with Garay in which he stated that the Employer could not legally "offer anything" to the employees before the election, but that if the Union lost, the employees could then "get a group of people and talk to" Dean Koplik, vice president of operations. According to Marcano, he told Garay that "if they were afraid to face [Koplik], because there's a lot of people that are afraid of supervisors, or the guys in the office," he would go with the group to "open it up."

The hearing officer did not find it necessary to resolve any issues of credibility between Garay and Marcano because, in his view, Marcano's own testimony confirmed that he had promised to "intercede with management on behalf of the employees, in order to bring about a situation in which employees would no longer have a need for a union." The hearing officer found that there was a "clear implication that the Employer would ameliorate the employee complaints" through this dialogue, and that Marcano's statements to Garay accordingly constituted an objectionable promise of a benefit to employees if they would vote against the Union.

We find that the record is insufficient to establish that the conversation between Marcano and the two employees could have affected the results of the election, which as noted above, the Union lost by a margin of six votes. As the hearing officer noted, there is no affirmative evidence in the record indicating that Marcano's statements to Garay and her sister were disseminated to any other employees. To the contrary, Garay testified that she took no action based on Marcano's suggestion to "get a group of people together."

In light of Garay's testimony, there is no basis for finding that those statements could have affected more than these two votes. Under these circumstances, and given the six-vote margin in the election, we are unable to onclude that this single incident could have affected the results of the election. See *Kokomo Tube Co.*, 280 NLRB 357, 358 (1986); *Metz Metallurgical Corp.*, 270 NLRB 889 (1984). We will accordingly certify the results of the election.

## CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Local 174, United Food and Commercial Workers, AFL—CIO, and that it is not the exclusive representative of these bargaining unit employees.

<sup>&</sup>lt;sup>1</sup> In the absence of exceptions, we adopt, pro forma, the disposition of these objections.

<sup>&</sup>lt;sup>2</sup> The initial tally of ballots showed 51 for and 51 against the Petitioner, with 10 challenged ballots. When the hearing officer issued his report, the ballot challenges had not yet been resolved.